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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 404

THE COTTMAN COMPANY, A BODY CORPORATE, AND MARYLAND CASUALTY COMPANY, A BODY CORPORATE,

Petitioners,

VS.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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VS.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, The Cottman Company and Maryland Casualty Company, pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit rendered August 2nd, 1951, reversing a decree of the United States District Court for the District of Maryland, dated October 10th, 1950.

JURISDICTION

Jurisdiction is based on 28 U. S. C. A. Section 1254 (1).

OPINIONS BELOW

The District Court's opinion, which is unreported, is found at R. 7. The opinion of the Court of Appeals is found at R. 18 and is reported in 190 Fed. 2nd 805 (adv.).

SUMMARY STATEMENT

The case arose upon a suit by the United States against petitioners on a bond guaranteeing the payment of customs duties found legally due the United States in connection with the arrival of certain vessels in the port of Baltimore.

A duty was assessed against the SS CHATHAM C. LYON and her owners under authority of Rev. Stat. 3114, 19 U. S. C. A. Section 257, which provides that expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an *ad valorem* duty of 50% of the cost thereof in such foreign country; and that the vessel shall be seized and forfeited if the owner or master shall willfully and knowingly neglect or fail to report, make entry and pay the duties so imposed.

The vessel's owners admitting that the repairs upon which the assessment was based were made in a foreign country, asked for remission of the duty under authority of Rev. Stat. 3115,* 19 U. S. C. A. Section 258, which provides in part as follows:

> "If the owner or master of such vessel furnishes good and sufficient evidence—

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* This statute and Rev. Stat. 3114 are set out in full in an appendix to Petitioners' Brief in support of Petition.

> (1) That such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination; * * *, then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture * * *."

The Collector at Baltimore and thereafter the Commissioner of Customs denied the application for remission without hearing.

When the duty was not paid, the government brought this suit in the United States District Court for the District of Maryland, against petitioners on the bond. The District Court held that the vessel owner was entitled to a formal hearing in accordance with the Administrative Procedure Act, 5 U. S. C. A. 1001, etc., and thereafter to review by the District Court before suit on the bond could be maintained. The Government's suit was thereupon dismissed with leave granted the United States to proceed at the administrative level in accordance with the District Court's opinion.

On appeal, the case was reversed and remanded to the District Court with direction to enter judgment on the bond for the United States, the Court of Appeals holding that no matter constituting a defense had been asserted. The matter of remission was treated as being wholly within the discretion of the Secretary of the Treasury and the case was disposed of on the theory that there is no defense to the duty assessed under Rev. Stat. 3114 unless the Secretary remits it under Rev. Stat. 3115, which he has not done (R. Op. 20). It was further held that there

is adequate statutory authority for the delegation by the Secretary of his duties under Rev. Stat. 3115, to the Collectors and Commissioner of Customs, but even if the delegation was invalid, petitioners could not assert that invalidity in defense to this suit. Review of the Secretary's action to the extent any review is available was held to be within the exclusive jurisdiction of the Customs Court, and the Administrative Procedure Act was held to have no application.

Petitioners contend and will show in their brief that the Court of Appeals complete approval of administrative practices in the Treasury Department in connection with the remission of duties under Rev. Stat. 3115 is contrary to the decisions of this Court and ought not to be sustained.

QUESTIONS PRESENTED

1. Does Rev. Stat. 3115, 19 U. S. C. A. 258, require a hearing before final denial of an application for remission thereunder in order to conform to the due process clause of the Fifth Amendment?

2. Assuming the due process clause does not apply, does the language of Rev. Stat. 3115 nevertheless contemplate that a hearing was intended in order that the administrative determination will satisfy elementary standards of fairness and reasonableness.

3. If a hearing is required in proceedings under Rev. Stat. 3115 either as a matter of due process of law or to satisfy elementary standards of fairness and reasonableness, does this requirement bring the matter within the coverage of the Administrative Procedure Act, 5 U. S. C. A. 1001, etc., including its review provisions?

4. If on an application for remission under Rev. Stat. 3115 a hearing is required by the due process clause or the need for a hearing is to be implied from the language of the Statute in order to satisfy elementary standards of fairness and reasonableness, can one whose application for remission has been denied without a hearing assert that fact in defense to the Government's suit in a United States District Court to collect the duty sought to be remitted?

5. Can the Secretary of the Treasury validly delegate his duties under Rev. Stat. 3115, 19 U. S. C. A. 258, to the Collectors and the Commissioner of Customs?

6. If the Secretary cannot validly delegate such duties to the Commissioner and Collectors of Customs, can one whose application for remission has been denied by a Collector and the Commissioner of Customs, acting under such invalid delegation, assert that fact in defense to the Government's suit in a United States District Court to collect the duty sought to be remitted?

REASONS FOR GRANTING THE WRIT

1. Petitioners contend that Rev. Stat. 3115 as construed in relation to Rev. Stat. 3114 and as sought to be applied against them, conflicts with the due process clause of the Fifth Amendment to the Federal Constitution. This point is substantial and sufficient to support the jurisdiction of this Court. *Lipke v. Lederer*, 259 U. S. 557, 66 L. Ed. 1061, 1064, 42 S. Ct. 549.

2. The case involves the construction of Rev. Stat. 3115 and its relation to Rev. Stat. 3114. These statutes are of general application and of great importance to shipping interests throughout the country. This Court's construction would guide the handling of proceedings under Rev.

Stat. 3115 in the future, and is of obvious importance in the administration of the Customs laws. Cf. *Alcoa SS Company v. United States*, 338 U. S. 421, 423, 94 L. Ed. 225, 229, 70 S. Ct. 190; *Wong Yang Sung v. McGrath*, 339 U. S. 33, 36, 94 L. Ed. 616, 628.

3. The case raises important questions of federal law which have not been, but should be decided by this Court; viz. the nature and extent of hearing and review in proceedings on application for remission of duties under Rev. Stat. 3115, the applicability thereto of the Administrative Procedure Act (5 U. S. C. A. 1001, etc.) and the validity of the Secretary of the Treasury's delegation of authority to the Collectors and Commissioner of Customs to act upon applications for remission under Rev. Stat. 3115.

4. The case involves the decision of federal questions probably in conflict with applicable decisions of the Supreme Court; in that

(a) This Court has held that administrative proceedings into which the requirement for a hearing is read to save the statute from constitutional invalidity must comply with the Administrative Procedure Act. *Wong Yang Sung v. McGrath*, supra.

(b) This Court has held that district courts may review determinations of an administrative officer to determine whether procedures adopted in making such determinations satisfy elementary standards of fairness and reasonableness essential to the due administration of the summary proceeding authorized by Congress, even though the statute does not grant any "rights" in the constitutional sense. *Lloyd Sabaudo Societa Anonima v. Elting*, 287 U. S. 329, 77 L. Ed. 341.

(c) This Court has held that a district court lacks jurisdiction to enforce action of an administrative agency taken by subordinates under delegation by an administrative officer authorized by Congress to perform the function, but lacking congressional authority to so delegate. *Cudahy Packing Company v. Holland*, 315 U. S. 357, 86 L. Ed. 895, 62 S. Ct. 651.

Wherefore petitioners pray that this Court issue a writ of certiorari to the United States Court of Appeals for the Fourth Circuit directing it to send to this Court for review a full transcript of the record and of the proceedings in the case numbered and entitled on its docket "No. 6248, United States of America, Appellant, versus The Cottman Company, a body corporate, and Maryland Casualty Company, a body corporate, Appellees," to the end that this case may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said United States Court of Appeals for the Fourth Circuit be reversed and remanded by this Court, and for such further relief as to this Court may seem proper.

THE COTTMAN COMPANY,

MARYLAND CASUALTY COMPANY,

By JOHN H. SKEEN, JR.,

WILLIAM A. SKEEN,

Counsel for Petitioners.

Dated: October 29, 1951.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. ------

THE COTTMAN COMPANY, A BODY CORPORATE, AND
MARYLAND CASUALTY COMPANY,
A BODY CORPORATE,

Petitioners,

VS.

UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

FIRST POINT

Petitioners contend that Rev. Stat. 3115 as construed in its relation to Rev. Stat. 3114 and sought to be applied against them, conflicts with the due process clause of the Fifth Amendment to the Federal Constitution.

It is conceded by the Government that, although the application for remission filed by the vessel's owners in this case has been finally denied and the duty is now sought to be enforced by suit on petitioners' bond, no opportunity for a hearing on the merits of the application has ever been afforded. The Government asserts that it has been

the practice in the Treasury Department for many years to take final action upon similar petitions for remission without formal hearings. In justification of the practice it is said that this long-established administrative interpretation overrides any original reading of the statute as contemplating a hearing, that Congress has twice reenacted the statute without expressly requiring a hearing, and that applicants for remission have no "rights" under the statute in the constitutional sense because Rev. Stat. 3115 does not itself impose any liability to forfeiture but, rather, provides for relief from possible forfeiture should the petition for remission be granted. It is said that because Congress has the power to require payment of the duty on imports covered by Rev. Stat. 3114 without reference to how or why the repairs were made, its authorization to the Treasury Department to remit if the prescribed conditions are fulfilled merely constituted an act of legislative grace.

This Court, however, has said that from the mere fact that the legislature might, without notice or hearing, require by direct order the doing of a certain act, it does not follow that an administrative officer may be empowered, without notice or hearing, to order the same act upon his own opinions and with finality. "There is an obvious difference between legislative determination and the findings of an administrative official not supported by the evidence. In theory, at least, the legislature acts upon adequate knowledge, after full consideration and through members who represent the entire public." *Southern Railway Company v. Virginia*, 290 U. S. 190, 197; 78 L. Ed. 260, 266.

Petitioners submit that Congress could not have intended the Secretary to exercise the unrestrained authority he is said to have under Rev. Stat. 3115. What he does or fails to do can gravely affect substantial property rights. It is

unduly technical and thoroughly unrealistic to say that Congress intended foreign vessel repairs in fact necessitated by stress of weather to be dutiable merely because the Secretary failed to perform his functions under Rev. Stat. 3115. Yet, if he does nothing at all, or arbitrarily denies an application, according to the interpretation given the statute by the Treasury Department and sustained by the Court of Appeals in this case, the owner must pay the duty or his vessel is liable to forfeiture. And the Customs Court, while it will review *de novo* the validity of an assessment under Rev. Stat. 3114 has consistently held it cannot review anything done by the Secretary under Rev. Stat. 3115.

Rev. Stat. 3115 clearly envisages a quasi-judicial determination affecting substantial property rights. This Court has frequently held that where an administrative body is entrusted with quasi-judicial functions, due process of law requires that there be an opportunity for a hearing at some point before final determination. *Ewing v. Mytinger and Casselberry*, 339 U. S. 594, 599, 94 L. Ed. 1088, 1094; *Phillips v. Commissioner*, 283 U. S. 589, 596, 597, 75 L. Ed. 1289, 1296, 1297; *Bowles v. Willingham*, 321 U. S. 503, 520, 88 L. Ed. 892, 906; *Yakus v. United States*, 321 U. S. 1, 14, 15; *Morgan v. United States*, 304 U. S. 1; *Opp Cotton Mills v. Administrator*, 312 U. S. 126.

It is petitioners further contention that a complete denial of any hearing cannot be sustained on such insubstantial grounds as administrative interpretation, no matter of how long duration, or by the so-called doctrine of legislative approval. It is contended, infra p. 16, that the hearing which should have been afforded under Rev. Stat. 3115 must be a hearing of the kind prescribed by the Administrative Procedure Act, 5 U. S. C. A. 1001, etc. This Court has said that that Act is to be broadly applied to give effect to its remedial purposes where the evils it was

aimed at appear. *Wong Yang Sung v. McGrath*, 339 U. S. 33, 41; 94 L. Ed. 616, 624. Any presumptions which may have formerly existed by reason of an administrative interpretation favoring the denial of a hearing, ought not now to be given any force in the light of the Administrative Procedure Act and its purposes as enunciated by this Court. Petitioners believe that the case has been shown to involve a constitutional question of substantial importance and one which justifies the exercise of jurisdiction by this Court. *Lipke v. Lederer*, 259 U. S. 557; 66 L. Ed. 1061, 1064.

SECOND POINT

The case involves the construction of Rev. Stat. 3115 in its relation to Rev. Stat. 3114. These are statutes of general application and of great importance to shipping interests throughout the country. The case raises questions of obvious importance in the administration of the customs laws and this Court's decision would guide the conduct of similar proceedings in the Treasury Department as well as in other administrative agencies. Cf. Alcoa SS Company v. United States, 338 U. S. 421; Wong Yang Sung v. McGrath, 339 U. S. 33, 36, 94 L. Ed. 616, 628.

The questions here presented are of sufficient gravity and general importance to fully justify the grant of review by this Court. The Court of Appeals' approval of the administrative practice of the Treasury Department under Rev. Stat. 3115, if not reversed, will leave all vessel owners exposed to the caprice of subordinates in the Treasury Department, and will lend encouragement to other administrative bodies to adopt practices which may not conform to ordinary standards of fairness and reasonableness.

THIRD POINT

The case raises important questions of Federal law which have not been but should be decided by this Court.

It has frequently been held that the Customs Court is the exclusive tribunal for adjudication of questions involving customs laws and duties. *David L. Moss Company v. United States*, 103 F. 2nd 395, 397. It has also been held by the customs courts that action taken by the Secretary on a petition for remission under Rev. Stat. 3115 will not be reviewed there, or in any court. *Waterman SS Corporation v. United States*, 30 C.C.P.A. 119. But the Court of Appeals in this case holds that a district court must enforce a duty where the duty was sought to be remitted and remission was denied without a hearing and that a district court may make no inquiry into the validity or conduct of the proceedings resulting in denial. This decision threatens the power of district courts to decide questions before them according to law and is believed to be contrary to the decisions of this Court. In *Estep v. United States*, 327 U. S. 114. This Court held that a registrant under the Selective Service Act must be given an opportunity to show that his local board exceeded its jurisdiction by way of defense to a criminal prosecution for failure to submit to induction, despite the fact that the statute specifically provided that decisions of the local boards as to classification were final. This Court said, at pages 121, 122,

> "We cannot read paragraph 11 as requiring the courts to inflict punishment on registrants for violating whatever orders the local boards might issue. We cannot believe that Congress intended that criminal sanctions were to be applied to orders issued by local boards no matter how flagrantly they violated the rules and regulations which define their jurisdiction. * * * We cannot readily infer that Congress departed so far from

> the traditional concepts of a fair trial when it made the actions of the local boards 'final' as to provide that a citizen of this country should go to jail for not obeying an unlawful order of an adminstrative agency * * *."

No more should it be inferred in the case at bar that Congress intended to make an administrative decision of the Treasury Department final and unreviewable so as to require these petitioners to pay under a bond upon which their liability has not been finally determined, or subject the vessel involved to forfeiture on the basis of invalid administrative action. *cf. Stark v. Wickard*, 321 U. S. 288; *Fischer v. Haeberle*, 80 F. Supp. 652, (E. D. N. Y.).

In addition, the Court of Appeals in this case was the first court to pass directly on the validity of the Secretary's delegation to the Collectors of Customs under Rev. Stat. 3115. Although holding that even if the delegation was invalid, petitioners would still be liable on the bond, the Court of Appeals specifically sustained its validity (R. Op. 21-22). On the other hand, even the Court of Customs and Patent Appeals has earlier implied that there was substance to the challenge to the validity of the Secretary's delegation, but that Court declined to decide the point on the ground that it had not been raised in the protest. *Waterman SS Company v. U. S.*, supra. Petitioners contend that there is very real doubt of the Secretary's authority in this regard. It is conceded by the Government that the duties required of him under Rev. Stat. 3115 are of a kind which are non-delegable in the absence of specific statutory authority. But the only statutory authority on which the Government relies; viz, 18 U. S. C. A. 281 (b), authorizes delegation of duties only in connection with the importation of "merchandise," and the Court of Appeals'

conclusion that the term "merchandise" includes expenses of vessel repairs is, we submit, erroneous. This point is substantial and of grave importance to the Treasury Department as well as to vessel owners throughout the country. This Court ought not to allow an administrative officer to continue to exercise authority beyond that specifically granted him by Congress.

The Court of Appeals further said that it would "be unreasonable to require that (the Secretary) personally hold hearings and pass upon the remission of customs duties under this statute" (R. Op. 21). Petitioners submit that to the extent the feeling thus expressed influenced its conclusion that the delegation was valid, the Court was in error. If the duties are onerous and it is manifestly necessary that they be delegated, it is, of course, for Congress to do so. This Court should not encourage the impression that the opinions of lower federal courts are influenced by their ideas of what ought to be done legislatively.

The Court of Appeals held that the Administrative Procedure Act has no application to proceedings for remission of duties under Rev. Stat. 3115 (R. Op. 23). The applicability of the Administrative Procedure Act to this particular proceeding has not been decided by this Court. Petitioners discuss later in this brief the case of *Wong Yang Sung v. McGrath*, supra, and contend that this proceeding is subject to the Act under the rationale of the decision in that case, infra, p. 16. But further decision of this Court is needed to resolve questions resulting from claims of exemption from the Administrative Procedure Act by various administrative bodies. Decisions of lower federal courts upholding claims of exemptions of the Post Office (*Bersoff v. Donaldson*, 174 F. 2d 494, App. D. C. 1949) and of the Civil Aeronautics Board (*Eastern Airlines Inc. v.*

Civil Aeronautics Board, 178 F. 2d 726, App. D. C. 1951) have created doubts as to the extent to which this Court will apply its statement in *Wong Yang Sung*, supra at page 41, that "* * * it would be a disservice to our form of Government and to the administrative process itself if the courts should fail, so far as the terms of the Act warrant, to give effect to its remedial purposes where the evils it is aimed at appear." The present case affords this Court an opportunity to put an end to the tendency among administrative agencies to assert exemption claims which would undermine the purpose and effect of the Act.

FOURTH POINT

This case involves decisions of Federal questions probably in conflict with applicable decisions of the Supreme Court.

(a) In overruling petitioners' contentions that there should have been a hearing of the type afforded by the Administrative Procedure Act and that the District Court had the power to review under paragraph 10 of that Act, the Court of Appeals held that the Administrative Procedure Act had no application (R. Op. 23).

We have discussed under the first point of this brief reasons why petitioners believe a hearing should have been granted as a matter of due process of law, supra, p. 9. If a hearing should have been afforded, there can be no doubt under the plain language of this Court in *Wong Yang Sung v. McGrath*, supra that the hearing afforded must have been of the kind prescribed by the Administrative Procedure Act.

(b) *In Lloyd Sabaudo Societa Anonima v. Elting*, 287 U. S. 329, 77 L. Ed. 341 this Court construed Section 9 of the Immigration Act of 1917. That section provided that, if it

shall appear to the satisfaction of the Secretary of Labor that any alien has been brought into the United States in violation of provisions declaring it unlawful to bring to the United States certain aliens afflicted with certain diseases and disabilities which might have been detected at the time of foreign embarkation by competent medical examination, the person or transportation company bringing such alien to the United States, shall pay a stated fine. It was held that this statute contemplated that the Secretary shall fairly determine *after a hearing* and upon the evidence, the facts establishing violation of the statute, notwithstanding that the examining physician may certify that the disease or disability was discoverable at the time of foreign embarkation.

Lloyd Sabaudo Societa Anonima v. Elting, supra, is especially significant here, because it sustains the proposition that even if there is no "right" in the constitutional sense, district courts nevertheless have jurisdiction to review administrative action for the purpose of determining whether the procedure adopted in making the administrative determination "satisfies elementary standards of fairness and reasonableness essential to the due administration of the summary proceeding which Congress has authorized." (287 U. S. 329, 336.)

Petitioners do not concede that the present case does not involve "rights" in the constitutional sense as the Government contends and as the Court of Appeals seems to have held (R. Op. 20). For the reasons heretofore given under the First Point of this brief, supra, p. 9, it is earnestly maintained that substantial property rights are involved. However, whether "rights" in the constitutional sense are involved or not, a hearing should have been granted and district courts may exercise jurisdiction, as the District

Court properly did in the case at bar, to see that "elementary standards of fairness and reasonableness" are conformed to.

This Court specifically noted in *Lloyd Sabaudo Societa Anonima v. Elting,* at 287 U. S. 335, et seq.:

> "* * * the statute imposing the fines must be regarded as an incident to the exercise by Congress of its plenary power to control the admission of aliens, and due process of law does not require that the courts, rather than administrative officers, be charged, in any case, with determining the facts upon which the imposition of such a fine depends. It follows that as the fines are not invalid, however imposed, because unreasonable or confiscatory in amount, which is conceded, Congress may choose the administrative rather than the judicial method of imposing them."

This Court went on to say that,

> "The action of the Secretary is nevertheless subject to some judicial review as the courts below held. The courts may determine whether his action is within his statutory authority, * * * whether there was any evidence before him to support his determination * * * and whether the procedure which he adopted in making it satisfies elementary standards of fairness and reasonableness, essential to the due administration of the summary proceedings which Congress has authorized. * * *
>
> "The statute plainly authorizes the imposition of the fine only if it shall appear, to the satisfaction of the Secretary, that the existence of the disease or disability for which the alien was excluded, 'might have been detected by means of a competent medical examination' at the time of sailing. That §9 imposed upon the Secretary the official duty and responsibility of making such a determination was held by both courts below and is

> not questioned by the Government. Accordingly, his action in particular cases is subject to judicial review, within the limits mentioned."

The Court then concluded that the statute contemplates that the Secretary should fairly determine, after a hearing and upon the evidence, the facts establishing violation and at page 339 said:

> "The Act of Congress confers on the Secretary great power, but it is not wholly uncontrolled. It is a power which must be exercised fairly, to the end that he may consider all evidence relevant to the determination which he is required to make, that he may arrive justly at his conclusion, and preserve such record of his action that it may be known that he has performed the duty which the law commands."

As has been shown, the effect of decisions of the customs courts where review has been sought of the Secretary's action under Rev. Stat. 3115, is that his power is wholly uncontrolled. The District Court in this case held that his activities were subject to judicial control to the extent that it would not lend its aid to the enforcement of a duty the remission of which had been summarily denied without a hearing. That the District Court's view was correct and in accordance with the views of this Court seems clear from the above-quoted expressions from *Lloyd Sabaudo Societa Anonima v. Elting*, supra. The decision of the Court of Appeals is in conflict with the views therein expressed and should therefore be reviewed and corrected.

(c) The Court of Appeals, assuming the delegation by the Secretary to the Collectors and Commissioner of Customs to be invalid, held that although the failure of the Secretary of the Treasury to act personally under Rev. Stat. 3115, might in a proper case serve as the basis for a

petition for mandamus against him, such failure could not possibly constitute a defense to an action in a District Court to collect the duty assessed (R. Op. 22-3).

It is submitted that this reasoning is opposed in principle to the decision of this Court in *Cudahy Packing Company v. Holland,* 315 U. S. 357; 86 L. Ed. 895, wherein it was held that a district court lacked jurisdiction to enforce subpoenas issued by members of the Federal Trade Commission under invalid delegation from the Secretary of Labor.

Petitioners have heretofore shown the fallacy of the reasoning of the Court of Appeals whereby it concluded that nothing the Secretary does or fails to do short of actual remission will constitute a defense to this suit on the bond, supra pp. 10-11. This reasoning could have the practical effect of requiring the federal courts to enforce duties on items which would not be dutiable at all, but for the failure of an administrative officer to perform functions required of him by Congress. We have also discussed under the Third Point of this brief the basis for petitioners' contention that the delegation was in fact invalid.

CONCLUSION

The writ of certiorari prayed for should be granted and the decision of the United States Court of Appeals Fourth Circuit reversed.

Respectfully submitted,

JOHN H. SKEEN, JR.,

WILLIAM A. SKEEN,

Counsel for Petitioners.

October 29, 1951.

APPENDIX TO BRIEF

REV. STAT. 3114, 19 U. S. C. A., SECTION 257—DUTY ON EQUIPMENTS OR REPAIR PARTS FOR VESSELS.

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs. (Rev. Stat. §3114; Sept. 21, 1922, c. 356, Title IV, §466, 42 Stat. 957; June 17, 1930, c. 497, Title IV, §466, 46 Stat. 719.)

REV. STAT. 3115, 19 U. S. C. A., SECTION 258—REMISSION FOR NECESSARY REPAIRS.

If the owner or master of such vessel furnishes good and sufficient evidence—

(1) That such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination; or

(2) That such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel,

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section and section 257 of this title, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited. (Rev. Stat. §3115; Sept. 21, 1922, c. 356, Title IV, §466, 42 Stat. 957; June 17, 1930, c. 497, Title IV, §466, 46 Stat. 719.)

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